

SHERRY WOLFORD
Claimant

LRM INDUSTRIES, INC.
Respondent

CNA COMMERCIAL INSURANCE
Insurance Carrier

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ORDER

Claimant appeals from the Order of Administrative Law Judge Brad E. Avery dated August 12, 1999. In the Order, the Administrative Law Judge denied claimant temporary total disability compensation finding her condition not related to or caused by her work.

ISSUES

Is claimant's right to temporary total disability compensation, while she is recovering from a non-work-related medical condition which occurred while she was off work due to a work-related injury and which prevents her from continuing medical treatment for her work-related injury, a jurisdictional issue properly before the Board on appeal from a preliminary hearing?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered accidental injury on November 25, 1997, while working for respondent. The injury was to claimant's right shoulder and right arm. That injury has been stipulated as compensable, and claimant was provided treatment from an authorized treating physician. During the time claimant was off work and receiving medical care for the shoulder injury, she suffered a non-work-related stomach problem which prevented her from completing the physical therapy and medical care for the shoulder injury and delayed

her ability to return to work from this shoulder injury. Both parties agree there is no connection between the stomach problem and claimant's employment.

The only issue before the Board is whether claimant's personal health problems, occurring while claimant is off work because of the compensable work-related injury, should or should not entitle claimant to temporary total disability compensation under the Workers Compensation Act.

K.S.A. 1998 Supp. 44-534a makes applicable to both claimant and respondent specific procedures regarding appeals from preliminary hearing awards. K.S.A. 1998 Supp. 44-551 limits the rights of the parties to an appeal from a preliminary hearing order to situations where it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 1998 Supp. 44-534a allows appeals from preliminary hearings for specific jurisdictional issues, which include whether claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given and claim timely made, or whether certain defenses apply. The administrative law judge is specifically empowered to decide issues dealing with claimant's entitlement to medical treatment and temporary total disability compensation under K.S.A. 1998 Supp. 44-534a.

The issue before the Board is not whether claimant suffered accidental injury arising out of and in the course of her employment to the shoulder. That has been stipulated. It is also not whether claimant has suffered some work-related injury to her stomach, as the non-work relationship of the claimant's stomach problems has also been stipulated. The issue is claimant's entitlement to temporary total disability compensation while receiving treatment for this non-work-related stomach ailment. The Appeals Board finds that, under these facts and circumstances, the Administrative Law Judge was well within his authority to decide the issue of claimant's entitlement to temporary total disability compensation. This decision on the part of the Administrative Law Judge is not an issue which is appealable under K.S.A. 1998 Supp. 44-534a or K.S.A. 1998 Supp. 44-551. Furthermore, the Administrative Law Judge did not exceed his jurisdiction in denying the relief requested. Therefore, the Appeals Board finds it does not have jurisdiction to consider this matter from a preliminary hearing appeal and claimant's appeal of this matter is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by claimant from the Order of Administrative Law Judge Brad E. Avery dated August 12, 1999, should be, and is hereby, dismissed, and the Order remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Michael J. Unrein, Topeka, KS
Gary R. Terrill, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director